

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY - 5 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcasting Stations,)
(Richlands, Shallotte, Topsail Beach, and)
Wrightsville Beach, North Carolina))
)

MB Docket No. 05-16
RM-11143

DOCKET FILE COPY ORIGINAL

To: The Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

**OPPOSITION
TO MOTION OF SEA-COMM, INC.
TO STRIKE REPLY COMMENTS OF CONNER MEDIA CORPORATION**

Conner Media Corporation ("Conner"), by its attorney, pursuant to Section 1.45(b) of the Commission's rules, hereby respectfully opposes an April 26, 2005 Motion to Strike filed by Sea-Comm, Inc. ("Sea-Comm") in the captioned matter, which seeks dismissal of Conner's April 5 Reply Comments as having been untimely filed.

In a way it is understandable why Sea-Comm is seeking to divert attention to specious procedural aspects of this case and away from its deficient substantive position. As Conner pointed out in its subject Reply Comments, Sea-Comm has failed to demonstrate, through a convincing "*Tuck*" showing, that the community of Richlands is sufficiently independent to justify a comparative preference for a first local service. Conner went on to note that even were the *Tuck* showing contained in its own counterproposal (involving a first local service at Swansboro) to be rejected on the same basis, then Conner's counterproposal would still be preferred on the basis of substantially greater increased service. Even so, Conner did not attempt to provide any new data or legal citations in its Reply Comments, and so even if they were to be

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stricken, all of the underlying information upon which a decision is to be made in this case is already in the record. In that light, Sea-Comm's motion is a patent waste of Commission resources, as grant of the relief it seeks would have no bearing upon the outcome of this case.

In any event, this is Sea-Comm's second bite at the same desiccated procedural apple. Sea-Comm raised an identical argument in April 5 Reply Comments which, despite the title, served as a motion to strike Conner's March 21 Comments and Counterproposal as untimely filed. As demonstrated in an April 12 "Procedural Response to Reply Comments,"¹ Conner's Comments and Counterproposal were indeed timely filed by messenger at the Commission's Secretary's designated remote office at 236 Massachusetts Avenue, NE. Conner documented timely filing with its own date-stamped copy of the first page of its Comments and Counterproposal, supported by the declaration of the individual who effected the filing and who swore under penalty of perjury that it was indeed date-stamped on the due date by proper Commission personnel. Conner further demonstrated that its filing procedure was fully consistent with all relevant Commission procedural directives.²

The instant situation warrants the same response as Conner's April 12 demonstration of compliance with respect to its Comments and Counterproposal. Specifically, now, as then, Conner proffers herewith a declaration of Lonnie Robertson, Jr. affirming that Conner's Reply Comments were properly filed with the Commission Secretary, together with our receipt copy of

¹ Since Conner's April 12 "Procedural Response to Reply Comments" fell outside the normal pleading cycle (even though it was tantamount to an opposition to the "motion to strike" nature of Sea-Comm's Reply Comments and thus fully justified), Conner filed a concurrent April 12 "Motion for Leave to File Procedural Response to Reply Comments," which remains pending.

² Conner also pointed out two highly ironic aspects to Sea-Comm's claims to the contrary. First, Sea-Comm's own Comments in this case were addressed in the very same manner as Conner's *allegedly defective Comments and Counterproposal* and thus, consistent with Sea-Comm's hyper-technical analysis, should themselves be dismissed, thereby leaving no viable comments on file and warranting termination of this entire proceeding. Second, Sea-Comm obtained a date stamp on a transmittal letter addressed to the FCC Secretary (**in addition** to a date stamp on the cover page of its pleading, which was addressed to Commission processing staff, as was Conner's) only by blatantly violating the Commission's express directive that only a single receipt copy would be issued per filing. *Conner noted the extreme impropriety of permitting Sea-Comm to benefit from its own failure to have complied with the Commission's explicit filing mandates, which Conner fully respected.*

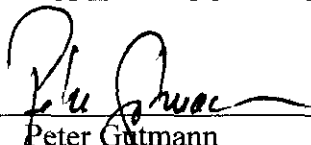
the first page of our pleading bearing the date stamp obtained in that process. Consequently, notwithstanding Sea-Comm's speculation as to the manner in which Conner's Reply Comments might have been filed, it is clear that they indeed were filed consistent with all applicable Commission requirements and should be accepted.³

It is worth noting that even were Sea-Comm correct, no useful purpose would be served in striking Conner's Reply Comments, since (a) all of the substantive content in Conner's Reply comments has already been raised in Conner's initial Comments and thus would remain in the record, (b) if Conner's Counterproposal were to be stricken, as Sea-Comm urged earlier, then Conner's Reply Comments would automatically become moot, and (c) upon acceptance of Conner's counterproposal, a further opportunity will be given to file replies, in which case the subject Reply Comments could simply be resubmitted.

In view of the foregoing, Conner respectfully submits that its subject Reply Comments were properly filed and that Sea-Comm's Motion to Strike should be denied.

Respectfully Submitted,

CONNER MEDIA CORPORATION

By 
Peter Gutmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, NW
Seventh Floor
Washington, DC 20005
(202) 857-4532

May 5, 2005

³ The three cases cited by Sea-Comm as ostensible support for its position (Motion at n.4) are utterly immaterial, as each merely recites the general proposition that timely filing is required and none contains any indication at all of the situation or timing of the defective filings therein. Consequently, they have no apparent connection with the present situation.

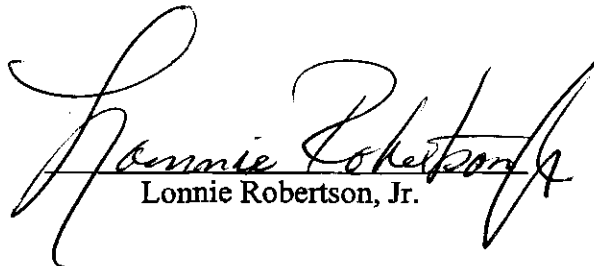
ATTACHMENT 1

STATEMENT UNDER PENALTY OF PERJURY

Lonnie Robertson, Jr. states under penalty of perjury that the following is true and correct of his personal knowledge and belief:

1. I am manager of Capital Filing Specialists. Our firm handles all date-stamped FCC filings for Womble Carlyle Sandridge & Rice, PLLC. In fact, I personally handle FCC filings for that firm.
2. The "Reply Comments of Conner Media Corporation" in MB Docket 05-16 was personally delivered by me to the Federal Communications Commission's Secretary's remote office at 236 Massachusetts Avenue, NE, Suite 110 on April 5, 2005. I personally observed the document being stamped in as received on that date. I returned a copy of the first page, with a date-stamp showing receipt on March 21, to Womble Carlyle's offices the following morning.

5/5/5
Date


Lonnie Robertson, Jr.

ATTACHMENT 2

STAMP & RETURN

FILE COPY

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APR - 5 2005

Federal Communication Commission
Bureau / Office

To: Assistant Chief, Audio Division, Media Bureau

REPLY COMMENTS OF CONNER MEDIA CORPORATION

Conner Media Corporation ("Conner"), by its attorney, pursuant to Sections 1.415 and 1.420 of the Commission's rules, hereby respectfully submits its initial Reply Comments in the captioned matter.

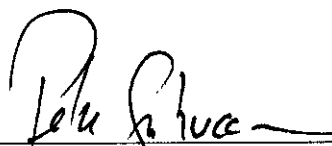
Conner respectfully notes that it filed Comments and a timely Counterproposal on March 21, 2005. Therein, it demonstrated that all of the relief sought by Sea-Comm, Inc. ("Sea-Comm") in the Commission's *Notice of Proposed Rulemaking* herein, DA 05-76, released January 28, 2005 ("*NPRM*") could be realized, together with substantial additional public interest benefits that would result from the substitution of Swansboro for Richlands and the consequent upgrade of station WZUP(FM), La Grange, North Carolina from Class C3 to Class C2. Conner assumes that, upon acceptance of its Counterproposal, the Commission will issue a Public Notice setting a date for further reply comments directed to its Counterproposal. In the meantime, Conner offers the following brief observations with respect to the only other set of comments submitted herein – by Sea-Comm on March 10.

¹ We assume that at some future point the communities of La Grange and Swansboro will be added to the caption, pursuant to the Counterproposal which was timely submitted herein.

CERTIFICATE OF SERVICE

I, Peter Gutmann, an attorney at the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that a true copy of the foregoing "Procedural Response to Reply Comments" were mailed, postage prepaid on this 5th day of May, 2005, to the following:

John Griffith Johnson, Jr., Esquire
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004-2400
(Counsel for Sea-Comm, Inc.)



Peter Gutmann